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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963.

No. 470.

JOHN CLAY,
Petitioner,

vs.

SUN INSURANCE OFFICE, LIMITED,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

REPLY BRIEF OF PETITIONER.

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Argument—

While the Respondent has raised two points of argument in preparing its Brief, it appears that both points deal with the same question, that is, the denial of due process of law should the decision of the lower court be reversed and the interest of the state, where the interest of the forum state is clearly superior. In the case at bar, the Supreme Court of the state has declared the interest of the State of Florida clearly superior to the interest of the State of Illinois, and the interest of the forum state should be upheld 2

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Constitutional Provisions and Statutes Involved

The Constitutional Provisions and Statutes are the same as those referred to in Petitioner's Brief after Writ of Certiorari, on page 2.

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STATEMENT OF THE CASE.

The statement of the case as set out in the Brief of the Petitioner and the Brief of the Respondent is substantially correct, except in the following instances:

In the statement of the case prepared by the Respondent the pleader attempts to inject certain Statutes of the State of Illinois which are not pertinent in this case. These

various Statutes of Illinois are not referred to under the Constitutional Provisions and Statutes involved, nor are they referred to in the Transcript of Record. The pleader further implies that the testimony of Mr. Clay (R. 21) refers to the property under the policies. However, the testimony of Clay (R. 21) denies without contradiction in the records that the property mentioned in the Final Decree of Divorce referred in any way to the property involved in this suit.

ARGUMENT.

POINT 1.

The Respondent has again, as in the past, in various Briefs and in arguments before the Courts, insisted that the questions raised in the case at bar are the same as the questions that were decided in *Home Insurance Company* v. *Dick*, 281 U.S. 397 (1930), and *Hartford Accident and Indemnity Co.* v. *Delta and Pine Land Co.*, 292 U.S. 143 (1934).

The above referred to cases are not controlling in the case at bar. In the Dick case the State of Texas had absolutely no interest in the insurance contract or in the loss which occurred outside of the State of Texas. The Delta and Pine case was not decided upon the applicability of the Mississippi Statute of Limitations, since the Statute of Limitations for the mere bringing of a suit under a contract was not at issue. The question in the Delta and Pine case was purely a matter of procedure. The insured in Delta and Pine failed to comply with the terms of the contract in that notice was not given to the bonding company within 15 months after the loss occurred. It was not a matter of a provision in the contract limiting the time in which to file litigation following the refusal of the insur-

ance company to recognize the claim. In the case at bar it is admitted by the Respondent that proper notice of loss was given to the insurer and the objection of the Respondent is based upon the fact that the suit was not filed within 1 year following the notice by the insuring company that it denied liability under the insurance policy. There is nothing in the Florida law on the question that refers in any way to a limitation on the right of the insurance company to designate a period of time in which the notice of loss shall be given.

In the case of the *Order of United Commercial Travelers* v. *Wolfe*, 331 U.S. 586 (1947), cited by the Respondent, the question was in reference to a life insurance policy issued by a fraternal society, and the Court recognized that since the policy was based upon the Constitution and By-Laws of a fraternal society, subscribed to by the insured, that entirely different conditions existed than where the policy is issued by a commercial company qualified to transact business in the State of the forum.

While the United States Court of Appeals has, on two occasions, in the case at bar, taken the position that the interest of the forum state, that is the State of Florida, was insufficient to abrogate the provision of the contract, we find that the Supreme Court of the State of Florida, and the District Court of the State of Florida, have definitely taken the position that the interest of the State of Florida in the case at bar is superior to the interest of the State of Illinois, and, therefore, the limitations imposed by the State of Florida are applicable. *Sun Insurance Office, Limited*, v. *Clay*, 133 So.2d 735 (R. 44) and *Schluter* v. *National Union Fire Insurance Company*, 144 So.2d 95 (District Court of Appeals, Florida, 1963, 2nd District).

The attorneys for the Respondent attempted to beg the question in the case at bar by referring to the Florida In-

surance Code. Particular attention is called to Florida Statute 627.01001 (paragraph II) (Statutes 1961). This provision of the Florida Code simply defines and sets out what shall be contained in an insurance contract and makes no mention of a change in the Statute of Limitations or in the public policy of the State of Florida as provided under Sections 95.03 and 95.11 (3), 1961. In fact the Florida Insurance Code, Chapter 627 of the Statutes of 1961, refers to the following types of insurance only:

Part III—Life insurance and annuity contracts
Part IV—Industrial life insurance policies
Part V—Group life insurance
Part VI—Disability insurance policies
Part VII—Group, blanket and franchise disability insurance
Part VIII—Credit life and disability insurance
Part IX—Property insurance contracts (fire insurance)
Part X—Casualty insurance contracts
Part XI—Surety insurance contracts
Part XII—Title insurance contracts
Part XIII—Variable annuity contracts

The Respondent seems to have lost sight of the question presented in these proceedings. We find all through the Brief of the Respondent, various statements attributed to the Uniform Commercial Codes, Uniform Security Act (Blue Sky Law), to the New York Standard Fire Insurance policy which has been accepted by the Insurance Commissioner of the State of Florida, under authority of statutory regulations.

However, we call attention of the Court in reference to delegation of legislative powers to Article 2 of the Constitution of the State of Florida:

"The powers of the government of the State of Florida shall be divided into three departments, Legislative, Executive and Judicial; and no person properly belonging to one of the Departments shall exercise any power pertaining to either of the others, except in cases expressly provided for by this Constitution."

Apparently the Respondent is advancing the theory that the State Treasurer of the State of Florida, as Insurance Commissioner, under the Insurance Code of said state, has had delegated to him by the Legislature, powers under which he, as Insurance Commissioner, could legislate the public policy of the State of Florida; and change by executive order the periods of limitations as provided by the Statute of Limitations of the State of Florida; that he has been given power to abrogate laws and Statutes enacted by the Legislature of the State of Florida. The Supreme Court of the State of Florida has, in the case of *Robbins* v. *Webb's Cut Rate Drug Store*, 16 So.2d 121 (1944), definitely denied the right of the Legislature to delegate its powers to an administrative officer.

When the case at bar came before the Supreme Court of the State of Florida, *Sun Insurance Office, Limited*, v. *Clay*; 133 So.2d 735 (R. 44), the Supreme Court definitely affirmed the public policy of the State of Florida in reference to insurance contracts such as are involved in this litigation.

In none of the cases cited as authority for its position by the Respondent, that is the Dick case, Delta and Pine case, and the Wolfe case, has the interest of the forum state been in any way comparable with the interest of the State of Florida, in the case at bar. While the contract was issued in Illinois it was a "personal property floater policy" guaranteeing against loss in any part of the world. Almost immediately after entering into the contract the

parties moved to the State of Florida, and so notified the Agent. The property loss and damage was located in the State of Florida. The insured had been a resident of the State of Florida during almost the entire period of the contract. The investigations were made by the insurance company in the State of Florida by agents employed by the company within the State of Florida, liability was denied in the State of Florida, and jurisdiction of the Florida Courts was never denied by the Respondent in proceedings in the District Court, in the Court of Appeals, nor in the Florida Supreme Court, when the questions were referred to the Florida Supreme Court on directions from this Honorable Court. The only possible connection that the State of Illinois could have with the policy was the fact that the policy was handed to the insured in the State of Illinois, and the premium was paid in the State of Illinois.

CONCLUSION.

It is respectfully submitted that the Court should reverse the decision of the Court of Appeals.

Respectfully submitted,

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CERTIFICATE OF SERVICE.

The undersigned, of counsel for Petitioner, certifies that a true and correct copy of the foregoing Reply Brief of Petitioner has been served on BERT COTTON, Esq., Attorney for Respondent, 56 Pine Street, New York, N. Y. 10005, by mailing by United States mail, airmail postage prepaid, this ..... day of March, 1964.

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